

In The United States District Court For Southern District of New York

Annamarie Trombetta,

Plaintiff,

vs.

Norb Novocin, Marie Novocin,
and Estate Auctions Inc.

and

WorthPoint Corporation

Defendants

Civil Action No. 18-cv-0993-RA-HBP

PLAINTIFF'S REPY TO

WORTHPOINT CORPORATION 'S

MEMORANDUM OF LAW IN OPPOSITION

TO PLAINTIFF'S MOTION FOR

SUMMARY JUDGMENT

PLAINTIFF'S REPLY TO DEFENDANTS WORTHPOINT CORPORATION 'S

MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S

MOTION FOR SUMMARY JUDGMENT ECF 476

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A. PLAINTIFF'S REPLY TO DEFENDANTS' WORTHPOINT CORPORATION'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN ECF 476.

Plaintiff's Reply to Defendant, WorthPoint Corporation's Memorandum of Law, Opposing Plaintiff's Motion for Summary Judgment in its entirety is set forth pursuant to Rule 56 of the Federal Rules of Civil Procedure. Plaintiff 's Reply is to conclusively prove WorthPoint Corp is liable for violations of Copyright infringement 17 U.S.C. § 101§, 501, § 504, the Visual Artists Rights Act, VARA, 17 U.S.C. § 106, § 106A § 504,) for violation of the DMCA 17 U.S.C. § 1202(a) removing or altering copyright management information under 17 U.S.C. § 1202(b) falsifying copyright management information, knowingly committing Fraud (Rule 9), Intentional Infliction of Emotional Distress, Tort, CPLR 213(2) and finding Defendants' intent was willful. Plaintiff 's requests of the Court, Declaratory and Permanent Injunctive Relief due to Plaintiff's merits in this case and the willful denial by Defendants. Plaintiff's claims in my Second Amended Complaint, were filed after discovery Dec. 27, 2022 in ECF 348, I reference ECF 348 and ECF 496 in this reply, due page limitations.

B. PRELIMINARY STATEMENT

WorthPoint Corp. set forth an Opposition against Plaintiff. In Plaintiff's first Response, filed on June 7, 2023 in ECF 496, to WorthPoint Motion for Summary Judgement (ECF 427) I summarized in part, WorthPoint's willful patterns to intentionally deceive Plaintiff and to deny relative discovery information of WorthPoint's 1972 meta data, licensing agreements for 1972 painting in this lawsuit In 2015 , 2016 and 2017 WorthPoint 's concealed the fact that WorthPoint had the 1972 oil painting post on its website and intentionally misdirected me to contact eBay (see EX.#19), instead of simply removing the false post from its own website. WorthPoint's website had my biographical text from my artist website, written in 2003 with my affirmation "*I began my formal training at The Brooklyn Museum School of Art while I was in high school*" that validates I did not paint in oils in 1972 when I was nine

years old. This quote, was in WorthPoint's webpage. The "1972 painting Man With Red Umbrella" was publicly characterized as "Shabby Chic", "torn/damaged", "starting bids at 99 cents" for a large, four foot high painting. Plaintiff's website, biography, year of birth with the phrase "New York Listed Artist" was in the EAI ad. These details pinpoint my identity, alone, to this false 1972 oil painting, publicly listed on the internet. I am the only artist named Annamarie Trombetta on the internet. At Plaintiff's Aug. 20, 2022 deposition, I informed all attorneys of these facts in my deposition **EX. #1A Pl. Depo.P121-122-178.** It took seven months to removed one false 1972 post from WorthPoint's website ending in March 2016. Six months later a new post of the false 1972 webpage was on the internet for a second time. On Jan. 4, 2017, I emailed CEO Will Seippel He never replied . In WorthPoint's evidence, WP000132 000133 and in 000134, Will Seippel and Jason Packer confirm to each other the URL 1972 post was on the internet.

Throughout litigation, WorthPoint's pattern to deceive, deny, and defy facts to the Plaintiff is exemplified in ECF 275 filed on August 29, 2022 and in ECF 307. 310, 312, 313 documenting my problems obtaining discovery from Defendants. In WorthPoint's Preliminary Statement Memorandum of Law, on page 7 of ECF 476, filed May 30, 2023 it states "*The case against WorthPoint is not about whether Ms. Trombetta created an oil painting of a Man with a Red Umbrella.* WorthPoint also stated in ECF 476 "*WorthPoint has never seen the painting..., never had possession or ownership of it " WorthPoint was not involved. And, even if it were, the statute of limitations against WorthPoint expired long before she made her claim.*". In WorthPoint's webpage is a visual, written claim "*©Copyrighted Work Licensed by WorthPoint*" proving. WorthPoint is "involved" based on their licensing and copyright claim.

Plaintiff who had ABSOLUTELY no involvement with the painting or these companies until I found 1972 posted under my name in August 2015, the year my biography was listed askART. The pertinent substance of this case is that the Plaintiff is NOT the artist who

painted the 1972 oil as Defendants purported. An artist's name and signature will last, long after the artist dies and is not bound by time. Use of my name, identity and biography links me to this painting. Without proof, I am tethered. this painting The false attribution and unauthorized use of my bio indeed constitutes infringements as noted by Judge Abrams in ECF 187, filed on Dec. 21, 2021. WorthPoint admitted in **SMF No.15.**" *With over 700 million entries in its Price Guide, WorthPoint cannot reasonably feasibly review every entry.*" In **SMF No.16.** WorthPoint stated "*To the extent eBay's data provided to WorthPoint contained images, WorthPoint automatically added a copyright notice providing that the copyrighted work was licensed by WorthPoint.*" WorthPoint's admits they do not verify posts, yet they "*automatically*" add "*© Copyrighted Work Licensed by WorthPoint*" to all photos. I never licensed, waived or transferred my rights of my biography to WorthPoint at any time. In Pl. Evid. 000160, highlighted in blue, is coding with my full name within the title of the 1972 painting URL with in the meta data on WorthPoint's website **EXHIBIT# 1 B.**

WorthPoint's admissions fail to justify why WorthPoint did not immediately remove the false 1972 oil painting in 2015, or in Jan 2016 and 2017. WorthPoint's recent admissions fail to explain why WorthPoint added the "*© Copyrighted Work Licensed by WorthPoint*" statement given their admission that they never saw the painting nor had it in its possession. Plaintiff's 1972 signatures prove I am not the artist who painted the 1972 Oil Painting Man With Red Umbrella. Base on the the red pencil signature on the back of the 1972 canvas, which is NOT signed Annamarie Trombetta, it is signed ANNA MARIA TROMBETTA PAINTED 1972, GIFTED 1977, the spelling not the same as my name. Both Defendants failed to identity who signed each signature on the 1972 oil painting Man With Red Umbrella" and failed to designate any person other than the Plaintiff as the artist. Not knowing who painted the 1972 oil painting, set forth my claim for Fraud Rule (9) in my SAC in ECF 348. Defendants failure to produce one electronic digitally formatted original 2012 ebay email allegedly

sent to Defendants on Dec. 1, 2012 is noted in ECF 320, 322, 331, and 339. Each Defendant's has blamed the other for the false 1972 internet post. Once again in Jan. 2017, Plaintiff confronted both Defendants, each ignored my outreach to remove the false 1972 post from the internet. (See **EX.#8 and EX. #9**). Prior to commencing litigation, I found on EAI's facebook page, a post by Wendy Martinez, noting to EAI they were selling counterfeit items on eBay of a piece of China, EAI falsely claimed was French porcelain **EX.#1 C**. Prior to adding WorthPoint as a Defendant, I found a lawsuit in 2015, against WorthPoint, the same year I found the false 1972 oil painting post. WorthPoint was sued for copyright infringement. The lawsuit was dismissed without prejudice due to lack of personal jurisdiction. **See EX.#1 D**

In 2019, Estate Auction Inc. blamed WorthPoint in its EAI's statement : "

We now understand that at least one third-party internet site scraped information about the December 1, 2012 eBay sale that contained the mis-attribution naming Ms. Trombetta and reposted the same on its website at least twice. Because EstateAuctions has no control over this third party, Ms. Trombetta had difficulty removing this information from the website".

Plaintiff has no association to the 1972 oil painting Man With Red Umbrella. I have no history of painting in oils until my teenage years as my 2003 biography states. I affirmed to the attorneys at my Aug. 30, 2022 deposition on Page 130 I never painted oils as a child.

EX. #1 E In 2017, when I told EAI, Norb Novocin the painting was fraud he suggested I hire a lawyer. See **EX.# #8 A and B**. WorthPoint in 2015, 2016 and 2017 stonewalled me. The post of the 1972 listing in Jan. 2017 (**EX. #21**) was secretly acknowledged by WorthPoint's staff and in discovery 2022, WorthPoint's attorneys produced the full email I sent to Will Seippel on Jan. 4, 2017. In WP000134, it is verified by both Will Seippel and Jason Packer saw the 1972 URLs back on the internet. In summary, Plaintiff has no actual history with either Defendants and have informed everyone I did not paint in oils in 1972. Plaintiff contacted both Defendants in Jan. 2017 in evidence. (**EX #8 for EAI - EX.#21 WP**).

As for the statutes of limitation, the separate accrual rule for successive copyright

infringements applies in this case. Plaintiff filed dated proof from 2017 in the months of March, April and May of 2017 that verifies the second false 1972 oil painting post in Google listings and the full 1972 webpage dated May 7, 2017. (**EX.#14 Plaintiff Evid. 000060 –71**). The intentional denial by Defendants, withholding of evidence conjoined with the rejection of any settlements talks caused Plaintiff to add IIED, tort and fraud claims to my SAC in ECF 348. Plaintiff's Fed.R.Civ.P. § 9(b) Fraud is detailed as per required in ECF 348 for both Defendants which I referenced in ECF 496 and in this reply, due to the brevity of space.

C. PRELIMINARY STATEMENT PLAINTIFF'S SECOND AMENDED COMPLAINT

Plaintiff emotional distress dramatically intensified in August 30, 2022 after undergoing a deposition for over nine hours with WorthPoint's attorneys, I was improperly served a summons and complaint on the street when I stopped at the light. My shoulder bag was tugged and I thought was being pickpocketed. WorthPoint's lawsuit filed in Fulton County, Georgia is related to my New York lawsuit In Seippel's Georgia complaint it states :

“Approximately one full year after filing the Amended Complaint, Trombetta arranged service of process on WorthPoint and W Seippel. On Jan 1, 2020, service was delivered via certified mail to WorthPoint. On January 4, 2020, service was delivered via Certified Mail to WSeippel and SSeippel’s home residence. “

WorthPoint's dates of Jan. 1, 2020 which is New Year's Day is incorrect. Secondly, the correct year was 2021 NOT 2020. **Pl. Evid. 000476-482.** Other false statement related to delivery date for the certified mail to WorthPoint. It was NOT received as Jan. 4, 2020. The certified mail to ROSWELL, GA30075. was sent on Jan. 4, 2021 was received Jan. 11, 2021. NOT 2020 as documented in Seippel's Complaint **Pl.'s Evid. 000492 000493 in EX.#2.** In the Seippel/WorthPoint Georgia Complaint in No. 18 on page 4 it falsely states : *“The service of process was coincided with the Christmas and New Year holidays in a purposeful effort to harass and disturb WSeippel, SSeippel and the remainder of their family.”* The WSeippel/WorthPoint Georgia Complaint have false statements in No. 15 and No. 18 The Georgia

lawsuit infringed upon my time. I had difficulty completing my expert witness reports. The root cause of the Georgia mailing is due to Mr. Seippel's email response to me and his attorney on waiving the summons: **SEE EX.#2 Plaintiff's Evid. 000490** "*On this, we should take the max time we have to get back to her under the law. Not a day earlier. Won't this be the first time she has to spend money. We have to, so should she. There is nothing for us to do until she dips into her pocket. Maybe she won't and we are done*". Dec.8, 2020 ~ Will Seippel

On Dec. 18, 2020 Judge Ronnie Abrams in ECF 126 on page 3, issued an order: "*Trombetta to effectuate service by affixing the sealed summons and amended complaint to the door of Defendants' "actual place of business, dwelling place or usual place of abode" and mailing these documents to Defendants as well.*

Will Seippel and his attorney were aware of this Order which is public on the docket. Mr. Seippel's temperament to "delay and "use the max time" under the law "is apparent in this lawsuit. **EX. #2 Pl. Evid. 000475 -482 Pl. Evid. 000488—489-490 Pl. Evid. 000492 000493**

WorthPoint's consistently demonstrates incorrect information in all its documented filings. At my deposition on August 30, 2022, I informed all attorneys I never gave or used my annamarie@trombettaart.com, website email address to contact WorthPoint ,yet I received emails from WorthPoint. Plaintiff only used my Yahoo email . **EX. #16 B pages 47-48-178).** On Jan. 19, 2023 employee Jason Packer's declaration incorrectly listed my annamarie@trombettaart.com website email as my contact email to WorthPoint, despite my testimony in August 2022 stating I never used to this email to contact WorthPoint. Mr. Packer produced the wrong email in WorthPoint data. **EX #16 B.** I note on March 25, 2022, WorthPoint emailed me its "Terms of Use" to my artist website address **EX #16 C (email)**

Pro se Plaintiff, is dealing with two Defendants, a team of five lawyers is forced to legally reply to another lawsuit in Georgia, all due to Will Seippel. I filed this lawsuit seeking protection to prevent Defendants from posting future false misattribution or creating a false secondary market in my name, I ask the Court for Declaratory and Permanent Injunctive Relief.

D. SUMMARY JUDGEMENT STANDARD

A pro se litigant is held to the same standards for summary judgment, but the pro se litigant should be given special latitude in responding to a summary judgment motions. Williams v. Savory, 87 F.Supp.3d 437, 451 (S.D.N.Y. 2015) (quoting Knowles v. N.Y. City Dep't of Corr., 904 F.Supp. 217, 220 (S.D.N.Y. 1995) (citation omitted)). Please Reference **ECF 496**

E. ARGUMENT

WorthPoint began it's argument with a quote “ *On a motion for summary judgment, the moving party bears the burden of establishing that no genuine issue of material fact exists. Fed. R. Civ. P. 56(a);* ” and the case Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The briefing for Celotex Corp. v. Catrett, case states “ *A defendant cannot get summary judgment if it does not have.... defendant must show the absence of evidence in the discovery record.* ”

Plaintiff brings to the Courts attention both Defendants are taking a “No Position” stance whether or not I painted the 1972 failing to acknowledge I am not the artist who painted the 1972 oil painting. First, WorthPoint took this stance in 2015 which created this problem. Second, the 1972 oil painting post was under my name and Google listing and unethically took space away from my true credential online. Third Plaintiff claims for copyright infringement, VARA, DMCA is due to the incorrect and unauthorized use of my biography. VARA is one of the quintessential claim in this case. Defendants did not designate who painted or signed the 1972 oil. Plaintiff produced my 1972 childhood signatures (**EX.#3A**)

Note worthy is the fact that the Novocins are paid members askART since 2001 and to WorthPoint in 2014 , I have never been a paid subscriber to askART. In 2015, I gave written consent for my biography listed on askART and filed my dated written consent. In addition, Wayback Internet Archive documents Sept 22, 2015 with ONE capture as the date my biography was listed on askART. **EX.#3B Pl. Evid. 000149,000150 and 000151.**

Unlike WorthPoint, I was never in possession of the digital meta data or anything related to the 1972 painting. I never saw or had possession of the A. Trombetta" photo image. Defendants possessed the digital content 1972 on WorthPoint's webpage adding the statement "*© with Copyrighted work licensed by WorthPoint*" with copyright symbol under It is a self evident, undisputed fact that WorthPoint ingested "*© Copyrighted work licensed by WorthPoint*" in their " Report " and in doing so infringed my internet space, crowding my overtaking my bio and misinforming my viewers I painted, at 9 years old the 1972 oil painting. Norb Novocin's deposition pages 38 and page 47 and 52 of **EX.#4** admitted the black "A. Trombetta" signature, he deliberately photographed, was "garbled- hard to read"(page 38)and initial "A " (page 52) . Norb Novocin could not give any conclusive response to verify or explain why there was one photo of the "A.Trombetta" (p. 47). Norb Novocin, who misattributed the oil painting to Plaintiff, circles back to the Defendants' case Celotex Corp. v.Catrett, "*A defendant cannot get summary judgment. ...evidence in the discovery record.*" Plaintiff is submitting into evidence pages of my August 30, 2022 deposition. I gave Testimony under oath on page 173 in line 14 to 24 to all attorneys and stated " *Sir, during discovery I asked your firm for several forms of evidence predominately the metadata, the actual date eBay/WorthPoint/ worthopedia documents produced the... I can affirm once again, I did not do the painting. I did not grant any person, business , legal entity at any time rights to l cense or use my self-authored biography.* **EX #5 Pl.s dep. p173 to 175.**

F. PLAINTIFF'S REPLY TO WORTHPOINT'S ARGUMENTS

REPLY TO WORTHPOINT'S POINT I. STANDARD OF REVIEW

In Defendants ECF 476, filed on May30, 2023 on page 9, WorthPoint attorneys falsely stated on April 17, 2023, when Plaintiff filed her motion for summary judgment, " *she did not file or serve any declaration in support of her motion or any exhibits (See ECF #432, 433). On April 20, 2023, Plaintiff belatedly filed a series of Declarations and Affirmations. Regardless of the absence of timely-submitted evidence in an admissible form, Plaintiff's claims*

would fail even if she submitted evidence in the proper format. Defendants statement is not true. Plaintiff submits i my proof of filing dated on April 17, 2023 in my email listing Plaintiff Declaration.with attachments Exhibits are of record in Docket as ECF Annexed in **EX. # 6 Plaintiff proof of filing** on 04/17/23 Declaration with exhibits. The Pro Se office takes 24 to 48 hours to file submissions. On April 17,2023 I filed seventeen filings. noted in ECF 429, 430, 431, 432, 433, 435, 437, 438, 439, 440, 441, 442, 443, 444, 445, 447 and 448.

POINT II. PLAINTIFF'S COPYRIGHT INFRINGEMENT CLAIMS ARE NOT TIME- BARRED

Copyright law follows the “separate-accrual rule,” which permits a new three-year statute of limitations each time a repeat infringement occurs. On Page 14 of ECF 187 filed on Dec. 21, 2021, Judge Abrams stated “*to be timely, any complaint of copyright infringement must have accrued after February 21, 2017*”. Evidence on or past Feb. 21, 2017 constitutes infringement. Copyright Infringement are under 17 U.S.C. §106, 17 U.S.C. §106(A) and §501(Ex.Rt) §507(b) and entitles Plaintiff to apply all laws due to the willful and or negligent infringements by Defendants. Plaintiff owns a US Copyright Registration No. TX 8-655-807. The Court in its discretion will decide copyright infringement, Plaintiff references other copyright cases such as Civ.00089 SDNY McGlynn vs Tower Investors, Com Inc and Psihoyos vs John Wiley & Sons Inc.748 F.3d 120,125 (2d Cir. Psihoyos had not filed the applications for registration of the relevant infringed photos prior to filing the action claiming infringement of copyright as required. The jury found Wiley had willfully infringed Psihoyos's copyright photos and awarded Psihoyos \$100,000 and \$30,000, respectively. In my case, Plaintiff's biography is original, It is self written in prose and is only applicable to myself and my artwork. Copyright law protects authors' exclusive rights to their works, the cornerstone of the law is that work protected must be original. Plaintiff monetizes my biography which was originally written for my catalog I sold at my solo exhibitions. My website bio states “ All of the imagery in this catalogwas either created en plein air or from the subject directly.

On Page 10 of Defendants ECF 476 filed May 30, 2023, Defendants are incorrectly alleging that the statutes of limitation are August 2015, which is when I first discovered the post. This is not the date of the last infringement. As aforementioned WorthPoint deceived Plaintiff and directed me to eBay's who confirmed the 1972 post was on WorthPoint's website. evidenced in page 9 of the eBay transcript.(See **EX. 7 eBay phone transcript Page 9**)

Documented in WorthPoint' Statement of Material Fact in 49. "*To further address Plaintiff's concerns, WorthPoint's CEO instructed WorthPoint employee Jason Packer to submit a removal request to Google on March 3, 2016. Ex. "G" at ¶19 See also, Doc. 36 at 46.*" WorthPoint's admits the date of March 3, 2016 as the removal date for the 1972 posting from the internet.

On the bottom of Page 11 of Defendants ECF 476 filed May 30, 2023, Defendants state "as attested to by William Seippel, the WP Report was deleted on Feb. 4, 2016 per Plaintiff's request and was never reposted on WorthPoint's website. See Dkt. 425-7, Seippel Declaration, ¶¶ 16-18. Plaintiff notes WorthPoint's evidence in WP000062, WP000096 and WP0000135 is the same Seippel's email reply to me on Feb. 20, 2016. An excerpt from it is "*we are the only persons that have saved this to my knowledge. Since you are the artists, and I have no reason to doubt that, and you feel this is fraudulent, we will remove the item from the site so that it does not mislead anyone on your paintings*". Four years later, Mr. Seippel filed a declaration falsely stating on March 1, 2016, he responded to my Feb. 20, 2016 email. His declaration does NOT include the Feb. 20, 2016 statement *we will remove the item*" **EX. #10 B #10 C**

As stated in Jan. 2017 I emailed Mr. Seippel due the posted on WorthPoint's website, appearing under my name. noted in **EXHIBIT #9 WP 000132, 000133 and 000134**. On WP000134, Mr. Seippel and Mr. Packer confirm the URL was on the internet. Both Defendants did nothing in 2017 to assist in responding or to remove the false 1972 post from the internet. In August 2017, Plaintiff followed the suggestion of Norb Novocin, hired an attorney and sent a settlement letter to resolve the violations with the Novocins **EX #8A Pls**

Evid 000887 to 000891 and EX #8B Plaintiff 2017 settlement letter. Upon ignoring my letter, on Feb 5, 2018 I filed my lawsuit. In March 2019 EAI Defendants issue a statement as aforementioned. In late 2019 I was granted to Leave to Amend my Complaint to add WorthPoint Corp . To satisfy the separate accrual rule I annex WorthPoint's sent 2017 emails to me and the 2017 Google Listings with "1972 Painting ..Signed Anamarie Trombetta.' in **EX #10 A Pl. Evid 0000060 to 000070**, I also note, on Feb 16, 2016 the 1972 url was linked to Titanic Lithograph poster, documented in WorthPoint's evidence on WP000071 is the notation "You visited this page on 2/16/ 16. **EXHIBIT #11** WP00071. Plaintiff's email to Will Seippel dated Feb. 29, 2016 has the Titanic Lithograph link which notes You visited this page 2/26/16 and at the bottom is he emailed me on Feb. 20, 2016, **EX#11 Pl. Evid 000042–0000043 Detail WP 0000071.** There is another Google Listing which dates I visiting the false 1972 webpage on WorthPoint 's webpage MarilynMonroe photo. On this page is You visited this page 02/17/2016. **EX.#12 PlEvid. 000370 000371 Feb 17, 2016**

On the top of Page 12 of Defendants ECF 476 filed May 30, 2023, Defendants claim "*the posts on Google, if any, were not on WorthPoint's website, as WorthPoint is not Google, WorthPoint has no affiliation with Google and there is no common interest between the two independent companies. Plaintiff fails to set forth any evidence of that the WP Report was re-posted on WorthPoint's website after it was permanently deleted in February of 2016. Id. at ¶ 16-17.*" First, WorthPoint's website posts fall under the responsibility of the WorthPoint's webmaster and IT tech, not Google. The responsibility falls on WorthPoint not Google.

Defendants ECF 476 page 12 lists my witnesses. To clarify Fact witness Scott Goodwillie gave testimony on his involvement with procuring interested galleries in Plaintiff's artwork in the summer of 2015. Due to the false 1972 webpage, the galleries did not follow up on our scheduled meetings. Vanessa Ploski confirmed that Plaintiff wrote my own biography which I read to her in person. Fact witness Willie Chu and I phoned Google through G-Suite Tel.

No. 877-355-5787 in 2016 and 2017 to find out if , why the false 1972 webpage post could be removed from the internet by Google. Google affirmed to Mr.Chu and I only WorthPoint can remove the 1972 post. My internet Expert Witness Patrick O'Leary affirmed he worked for Google and removing items from the the internet should take a few hours or days at best.

On page 12 of Defendants ECF 476 WorthPoint's attorney asserts "*Plaintiff merely alleged that on March 15, 2017, she searched on Google for 1972 Original Worth Point's site, and she cannot establish that the Biography was contained within WorthPoint's report of the Auction Listing within three years of the filing of the Complaint.* Annexed are three dated March 15, 2017 documents -one is an email removal request to WorthPoint's to stop sending emails, second is a Google listing with the false 1972 post including the Titanic Litho Poster **EXHIBIT #13 Pl.Evid. 000061 000062** Plaintiff has the full webpage of the 1972 Oil Painting Man With Red Umbrella Signed Annamarie Trombetta which I visited May 7, 2017 and is annexed in **EXHIBIT #14 Pl Evid. 000069 000070 000071**.

On page 13 of Defendants ECF 476 Defendants falsely asserted "*Without additional evidence, which Ms. Trombetta has failed to set forth, the timestamp is not a reliable indicator because it can be incorrect and/or manipulated.*" Plaintiff has file Pl. Evid 000058 to 000068 which include sent emails from WorthPoint all dated. I also submitted the most recent email sent to my ' public website email address from WorthPoint titled "We've Updated our Terms of Use" March 25, 2022 during litigation. **EX. #15 Pl's. Evidence 000880**

Defendants falsely assert on Page 13 of ECF 476 "*WorthPoint has proven, through Google Analytics, the testimony of Jason Packer.*" I reminds the Court Packer 's Declaration falsely and incorrectly issued in his declaration the wrong email address from my website email address instead of my Yahoo account address Plaintiff has never sent an email to anyone at WorthPoint using my website email address. **EXHIBIT #16 A #16 B and 16 C EX. #15 000879 - 000880.** Also in Mr. Packer's declaration attorney have used bate stamped number

WP000132 TWICE on evidence. Annexed is a chart by Packer with missing text stamp
WP000132 produce on Jan. 19, 2023 and WorthPoint's evidence produced on April 8, 2022
with a date from **2017** and is a page from my Jan. 4, 2017 email to Will Seippel **EX #17**

On page 14 of ECF 476 WorthPoint's attorneys via their internet expert witness state:
"Ms. Stricchiola opines with a reasonable degree of professional certainty that a cached version ... Google infrequently accessed the URL in question, and thus would not have changed its results. Id., pp. 12-13. WorthPoint's attorneys and expert witness are blaming "Google". Google is not responsible, for removing posts from the internet from a website owner. as Mr. Chu and I confirmed in 2016 and 2017. Jason Packer was responsibility. Google has a public support website and instructs how to "permanently" "remove items from Google and is in *EX.18B Google Help. In EX.18A is the Google public info pages and in EX.18 B are dated Google 1972 Listings with the 1972 oil painting listed on the internet in 2017.*

POINT III. PLAINTIFF'S COPYRIGHT INFRINGEMENT CLAIMS ARE NOT BARRED BY THE DMCA §512(c) SAFE HARBOR DEFENSE

WorthPoint is a for profit Corporation evidenced in the membership payments from Defendant Norb Novocins' to WorthPoint The DMCA §512(c) SAFE HARBOR rules are referenced in ECF 496 In ECF 187, page 17 thru to 19 of Judge AbramsOrder *"indicates a three- year statutory period that violates DMCA"* In EX.#18 are dated Google Listing with the 1972 WorthPoint post which prove the webpage was on the internet in May 7, 2017.

Plaintiff's emails to WorthPoint began in 2015 and Jan 14 2016 thru to March 2016. Plaintiff's also submitted phone calls transcript with eBay, Anita Brooks and Greg Watkins and I have included the transcripts in my Reply to ECF 479. As noted in No. 49 WorthPoint admits *"Jason Packer to submit a removal request to Google on March 3, 2016."* On Jan. 10, 2017 Plaintiff phone first Defendants Defendants did nothing to remove the post from the internet. According to the rules for Safe Harbor, both Defendants were obligated to respond

and remove the false 1972 .webpage **SEE EX #20 #21 and #22 A and #22 B .**

POINT IV. PLAINTIFF'S CLAIMS OF COPYRIGHT INFRINGEMENT OF MY BIOGRAPHY ARE NOT SUBJECTED TO THE DOCTRINE OF FAIR USE

Section 106 of the Copyright Act grants the owner of a copyrighted work "exclusive rights" over the copyrighted work, including the rights "to reproduce the copyrighted work," "to prepare derivative works based upon the copyrighted work," and "to distribute copies ... of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending." 17 U.S.C. § 106 ; *see also Arista Records, LLC v. Doe 3* , 604 F.3d 110, 117 (2d Cir. 2010) . The fair use factors are (1) the purpose and character of the use, (2) the nature of the copyrighted work, (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and (4) the effect of the use upon the potential market for or value of the copyrighted work 17 U.S.C. §107. WorthPoint is a for profit corporation. Second, Plaintiff's biography is written in prose and is a creative, original literary form of self expression and therefore does not qualify to be used under Fair Use. I have exclusive rights. Third as stated and admitted on page 12 of ECF 422 Estate Auctions Inc. Defendants : *Norb Novocin intended only to provide potential buyers with as much information as possible to increase EAI's chances of selling the Painting.*" Defendants used my bio for commercial use, the bio usage is not correct or historical. Fair Use is not inapplicable ."The crux of the profit/nonprofit distinction is ...whether the user stands to profit from exploitation of the copyrighted material without paying fees to the owner of the copyrighted work ." *Harper & Row Publishers, Inc. v. Nation Enters.* The use of my bio is a fraudulent material fact. I did not sign/ paint the oil.

Defendants state on Page 19 of Defendants ECF 476 filed May 30, 2023, the

"The WP Report should also be considered as "reporting," as described in the Fair Use provision, as the posting of the Listing and the information in the Listing was needed to accurately report what had occurred (even if the original information provided by Novocin was arguably false). Therefore, WorthPoint's use of Plaintiff's Biography was non-commercial and was made available to the public for the purposes of researching historic auction results. WorthPoint's posting has also transformed Mr. Novocin's use from commercial - to sell the Painting on eBay -to non-commercial and for research purposes,

Plaintiff ends this subject with two last quote from page 21 in ECF 476 filed May 30, 2023 and Defendants case reference Norman v. CBS, 333 F. Supp. 788 (S.D.N.Y. 1971). Defendants asserted " *Plaintiff concedes that only a portion of the work was used but alleges that fair use does not apply if the portion taken is the "heart" of the work with an improper usage.* " "The last quoted statement from Defendants is on the bottom of page 21 in ECF 476 3 Defendants' falsely asserted and referenced a page from Plaintiff deposition -173 Plaintiff admits that she does not monetize her Biography. ECF No 425-1, , Plaintiff's Deposition, p. 173, ll. 22-24" Plaintiff annexed in **EX#24Pl. Aug 30, 2022 Dep. Page 173** I did not admit that I do not monetize my biography. In the text of my biography on WorthPoint's webpage" it states *All of the imagery in this catalog was either created en plein air or from the subject directly.* My catalog was sold for profit at my solo exhibits. Attorney Jana Farmer has issued a false statement against Plaintiff. Her referenced to the case of Norman v. CBS, 333 F. Supp. 788 (S.D.N.Y. 1971) is not applicable as its Plaintiff , Charles Norman , obtained the material of poet Ezra Point from other authorities. Mr. Novicin testified "he grabbed my askART bio.

POINT V. PLAINTIFF'S CLAIMS UNDER VARA ARE NOT TIME-BARRED

VARA, like exclusive copyright, can only be invoked by the artist, and only under certain conditions. The significant difference between VARA, is the right of attribution which is so personal it is not defined yet, if it dies with the artist, or if the law allow artists to bequeath the right of attribution just as they can bequeath copyright ownership, typically for another 70 years after the artist's death. Although WorthPoint's attorneys have referenced a case Dos Santos v. Assurant, (an artist who lost her artwork a due to an eviction,) filed a claim under VARA. I set forth a more relevant case and reference Robert Fletcher vs. v. Peter Doig13 C 3270 (false attribution) which is also a case of refuted authorship. In my case and artist Peter Doig, our names and attribution will increase the value of any painting that was not authenticated to be created by the artist. In Peter Doig's case (a male artist) he was sued for

attribution to increase the value of a painting which had a dissimilar spelling of his name. In my case (a female artist) the false 1972 oil painting has two written dissimilar spellings and is noted as being physically damaged. There is a financial dichotomy and the reputation of each artist at stake. Rights of attribution are parallel in the importance to any painter's name, signature and reputation. In my case, like Peter Doig, we both did not paint the oil painting and the spelling of our names on the paintings was not the same spelling of the artist. In Mr. Doig's case the true artist was known. In Plaintiff's case the artist is unknown and infers a counterfeit painting, forgery. After discovery I filed a fraud claim .

The Visual Artists Rights Act (VARA) "was enacted as an amendment to the Copyright Act" and is subject to the same three-year statute of limitations, 17U.S.C. §507. The claim for damages for the three prongs and or elements for a VARA claims which fall under 17 U.S.C. § 101 (an unanimous author) "[T]he right of attribution protects the author's right to be identified as the author of his work and also protects against the use of his name in connection with works created by others."—Using the copyright rules if damages are willful the fine is increased to \$150,000 per work if the "willful." 17 U.S.C. § 504(c). In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages. Past cases awarded the VARA claim are due to the destruction of artwork Kent Twitchell v. West Coast General Corp and Cohen v. G&M Realty L.P. VARA 5 Pointz "The Second Circuit's landmark decision in Cohen v. G&M Realty L.P. changed the rights of all artists.

1. Plaintiff's Right of Attribution Claim

Equal as well is the monetary value of my name and signature and the how this is crucial to my financial business as an artist and the increase in monetary value to the 1972 oil painting. Defendant stated : " *Here, WorthPoint does not dispute that the Painting is a work of visual art and that Plaintiff creates works of visual art. In fact, WorthPoint takes no position on Plaintiff's claim that she did not create the Painting in question.* and wrote

“WorthPoint did not attribute the Painting to Plaintiff. This attribution was done solely by defendant Norb Novocin, with no input from WorthPoint. See ECF No. 425-2Mr. Novocin posted the attribution as part of his eBay Auction Listing for the Painting. Id. at p. 131, ll. 18-20.” Given that WorthPoint did not misattribute the Painting to Plaintiff but only passively displayed a report of the attribution by Mr. Novocin, WorthPoint cannot be liable for misattribution.”

Plaintiff notes both Defendants were passive in removing the internet post. WorthPoint, took no care, concern or interest and consciously failed to remove the false 1972 oil painting post from WorthPoint's website. Despite Defendants present “*no position*” of the authorship of the 1972 painting, their position does not erase or negate the continuous online presence under Plaintiff's name, my profession ie artist Annamarie Trombetta with my bona fides, authentic internet listings that were unethically linked to WorthPoints webpages, For a visual artist, their name and reputation are the pillars upon which their livelihood is built and are relative to an artists' direct earning power. Proof that I did not paint the 1972 oil can only be achieved with my authentic signature which I produced to vindicate my identity from this painting. My reason for this lawsuit is that someone wrote my name on a painting I did not paint which is forgery. The ordeal to prove I did NOT create a work of art cost/lost me five years of my life. I reference

a) Rights of Attribution and Integrity.— is Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art Please reference ECF 496
The Right to Privacy falls under the VARA claim The four most common types of invasion of privacy torts are as follows: • Appropriation of Name or Likeness. • False Light.

POINT VI. VARA CLAIMS ARE NOT TIME-BARRED, WORTHPOINT DID ATTRIBUTE THE PAINTING TO PLAINTIFF AND PLAINTIFF IS ENTITLED TO MONETARY DAMAGES UNDER THE VARA MISATTRIBUTION CLAIM; PERMANENT INJUNCTIVE RELIEF IS APPROPRIATE AND NECESSARY DUE TO DEFENDANTS WILLFUL DENIALS

The VARA violation for all three moral rights claims are (i) right to claim authorship, (ii) right to prevent the use of one's name on any work the author did not create, (iii) right to prevent use of one's name on any work that has been distorted, mutilated, or damaged. All of these rights were violated and apply in Plaintiff's case. The counterfeit misspelled “ANNA MARIA TROMBETTA” has a designated number and a notation that it was painted in 1972

that it has been “Gifted in 1977” yet no one has been named to the signature. Plaintiff, in 2015 contacted the NYPD and I did fill out a Federal Identity Theft report annexed in **EX #25 Pl. Evid 000167** I contacted a lawyer Plaintiff **Evid 000239** and NYPD Det. Randi Rose **Pl. Evid 000307.** In 2017 when the false post with the photo was on the internet again, I put a Freeze on my credit cards. **EX. #25 Pl Evid. Trans Union 000690 and Experian 000694.**

“ On Page 22 in ECF 476 WorthPoint wrote *WP Report did not serve as a replacement for the demand for her work, nor did it harm her ability to profit from her biography. The WP Report was generated for research purposes. Furthermore, Plaintiff’s argument that she lost gallery interest and lost a sale of artwork are insufficient to weigh this factor in Plaintiff’s favor*”

The attorneys casually wrote “*Plaintiff is no longer suffering any hardships at all since the post was removed seven years ago*”. WorthPoint attorneys have no idea what my life was like before this lawsuit. I never had vertigo. and suddenly came upon me in Feb, 2022 due to the demands in this case . I have filed my doctor visits and listed an expert witness for the mental distress due to the legal burdens. Plaintiff informs the Court I have been unable to paint, create new artwork or earn a living which has never happened before. It is due to this ordeal.

POINT VII. PLAINTIFF’S DMCA CLAIMS ARE NOT TIME-BARRED AS A MATTER OF LAW

The statute of limitations for DMCA claims are the same as the statute of limitations for any other copyright infringement claim. As noted in Judge Abrams Opinion and Order on page 17 to 19 of ECF 187 . The conduct by WorthPoint is within the three-year statutory period that violates DMCA , The willful adherence of WorthPoints’ name and false claim is a quintessential definition of the DMCA vocation. Moreover, Plaintiff’s biography had a copyright symbol and *© All work on this site are ©Annamarie Trombetta. All rights reserved.* ” . Furthermore, EAI Defendants have given testimony that they provided the “A. Trombetta” signature photo. WorthPoint Defendants have admitted in their Statement of Material Facts No. 16. *To the extent eBay’s data provided to WorthPoint contained images, WorthPoint automatically added a copyright notice providing that the copyrighted work was*

licensed by WorthPoint. *Id.*, at ¶11. WorthPoint admits to an automatic, adherence without looking or knowing what it is copyrighting, or what or who WorthPoint is infringing. It is Plaintiff notes in WorthPoint's Material Statement of Facts No 32. *The photograph annexed to the WP Report contained a notice © Copyrighted work licensed by WorthPoint*" ("©Copyright License Notice"). WorthPoint's SMF No,32 notice exemplify an admission to adding CMI which is an elements of DMCA violations. In the Second Circuit, courts often identify the elements of proof for a § 1202(b) removal/ alteration claim as requiring: "(1) the existence of CMI on the [infringed work]; (2) removal and/ or alteration of that information; and (3) that the removal and/or alteration was done intentionally."[Mango v. Buzzfeed, Inc.,356 F.Supp.3d 368, 376 \(SDNY 2019](#)

ii. Plaintiff's Claim Under DMCA §1202(a) Is Legally Sufficient

The elements of a claim for a violation of Section 1202(a) of the DMCA are: (1) that the defendant knowingly provided or distributed false copyright management information ("CMI"); and (2) that defendant did so with the intent to induce, enable, facilitate, or conceal an infringement. Plaintiff has submitted three forms of proof that attest my Biography was listed on askART in 2015 and not 2012. Moreover, as a matter of law Plaintiff's biography had a copyright symbol and **statement** *All work on this site are ©Annamarie Trombetta. All rights reserved.*" which was not in the Estate Auctions Inc description that was on WorthPoint's website. Furthermore, WorthPoint's webpage attached a false CMI *©Copyrighted work licensed by WorthPoint.*" Estate Auctions Inc is the source of the photo and the reason why WorthPoint adhered the "©Copyrighted work licensed by WorthPoint" WorthPoint's vague undefined statements as a matter of law is self evident that concealment is at hand. Plaintiff notes that in 2015, when Plaintiff called eBay in the transcript on page 13 of the transcript all copyrighted work need to be registered with eBay in EX. 21 Plaintiff brings the Court's attention an excerpt of confession, from page 34 of ECF 476 in which WorthPoint states. "Furthermore, as stated in the Declaration of Will Seippel, the postings are automatically

uploaded from eBay to WorthPoint's website and thus cannot be willful. WorthPoint does not and could not review each of the hundreds of millions of listings in its database. While Plaintiff alleges willfulness may be found when an infringer had only constructive knowledge, she fails to demonstrate how WorthPoint would ever have constructive knowledge."

Devoid of any review or knowledge WorthPoint adheres a "Coprighted work licensed by WorthPoint" notice to every photo. WorthPoint's URL included my full and correctly

spelled name and used the work "Original" in the caption of the URL. annexed is my CMI

POINT VIII- PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT ON THE FRAUD CLAIM

For the sake of Brevity and the limitations of page for this filing Plaintiff asks the Court to reference ECF 348 which details all eight counts of Fraud pages 51 thru 71, twenty pages in ECF 348 that fully details the listed eight counts of Fraud against WorthPoint . Plaintiff has detailed under New York law, the five elements fraud claim: (1) a material misrepresentation (not my signatures) or omission of facts both Defendant did not read my bio (no 12 photos) (2) made by defendant with knowledge of its falsity (3) and intent to defraud; failure by both Defendants in 2017 to remove, assist or respond to Plaintiff (4) reasonable reliance on the part of the plaintiff; and (5) resulting damage to the plaintiff. Fraud based on a "material omission of fact. for summary Plaintiff ECF 348 beginning on page 51 goes through to page 82 and details each of the eight counts of Fraud.

Plaintiff's Claim for Intentional Infliction of Emotional Distress Fails as a Matter of Law

As a matter of law IIED in New York, intentional infliction of emotional distress requires: (1) extreme and outrageous conduct; (2) intent to cause, or reckless disregard of a substantial probability of causing, severe emotional distress; (3) a causal connection between the conduct and the injury; and (4) severe emotional distress." HC2, Inc. v. Delaney, 510 F.Supp.3d 86, 104 (S.D.N.Y. 2020) Plaintiff has been publicly humiliated by the absurd claim that a nine year old painting a four foot painting which is, obvious fraud WorthPoint's intent to deceive began by concealing its website had this post. Plaintiff asks the Court to read and reference ECF 496

filed on June 7, 2023, Plaintiff's Response To WorthPoint Summary Judgement. Plaintiff also references my Second Amended Complaint filed on Dec. 27, 2022 in ECF 348 pages 73 to 76.

Plaintiff affirms to the Court I have not been able to earn any income since Jan. 2021. In good faith I wrote three settlement letters which Defendants have willfully rejected and failed to make any monetary offers. Both Defendants lied and deceived and then filed a motion to posting a bond by EAI and WorthPoint's lawsuit against Plaintiff in the state of Georgia. I have become is emotionally and physically compromised, and exhausted and feels trapped in litigation. Plaintiff did not paint this 1972 oil and I have a right to declare that it is a fraudulent painting. At present I am unable to live my life by choice and to pursue my artistic career, and I am burdened with litigation, forced to prove I did not paint an painting when I was nine. Defendants have legally belabored me while feeling no remorse for publicly distorting my public personae. The length of time to legally try to prevent and protect my name and careers is soon to be eight years is even more harmful to my mental, professional and financial stability.

G. TORT CLAIM FIRST COUNT NEGLIGENCE

Negligence as a civil tort occurs when a person breaches his duty of care which he owed to another due to which that other person suffers some hard or undergoes some legal injury. Defendants failure and omission to read Plaintiff bio has cost me eight years of my life. The statutes of limitation in New York for civil tort is six years ioral contract. I reference ECF No. 348 filed on Dec. 27, 2022 Dec. 19, 2022 in 341, I documented two counts of Tort Claims due to Willful Negligence. I reference to the Court page 75 -76 d -77 to 80.

H. PERMANENT INJUNCTIVE RELIEF FOR BOTH DEFENDANT

Plaintiff's request to the Court to grant permanent injunction relief for both Defendants and Reference ECF the four element in **ECF 496**. My request is due to WorthPoint consistent, resistant "No Position" stance and refusal to admit I did not paint the 1972 oil conjoined with fact that a similar name as mine appears on the 1972 oil painting .WorthPoint's ECF 476 reply

still refers the the 1972 post as a historic report, If I am not the artist and the artist is unknown, it is not a historic, it is fraudulent report. The 1972 internet post misinformed the public and distorted my personal historic records of facts. Plaintiff's seek legal recourse for Declaratory and Permanent Injunctive Relief is to prevent any further "false" misattributions

I. CONCLUSION

Plaintiff 's reply to Defendants Memorandum Opposing Plaintiff's Motion Summary Judgement due to the demonstrations and willful pattern to blatantly ignore Plaintiff's evidence. Defendants have done so repeatedlyFor these reasons, I respectfully requests Defendants Opposition to Plaintiff's Motion for Summary Judgement be denied with prejudice.

Dated: New York, New York June 29, 2023

Respectfully Submitted by

Annamarie Trombetta
175 East 96th Street (12 R)
New York. New York 10128
Pro Se Plaintiff

—Electronic Signature —

/s/ Annamarie Trombetta June 29, 2023

Annamarie Trombetta Pro Se Plaintiff

In The United States District Court For Southern District of New York

Annamarie Trombetta,
Plaintiff, Civil Action No. 18-cv-0993-RA-HBP
vs.
Norb Novocin, Marie Novocin,
Estate Auctions Inc.
and
WorthPoint Corporation
Defendants

CERTIFICATE OF SERVICE

I certify that on June 29, 2023, a true and correct copy of the foregoing document was served upon the parties of record via the Court's CM/ECF system and directly to all attorneys listed below to include Adam Bialek, Jana Farmer and John Cahill attorneys for WorthPoint Corporation and attorney Anderson Duff representing Marie and Norb Novocin and Estate Auctions Inc.

Dated: New York, New York June 29, 2023

Respectfully Submitted by

Annamarie Trombetta
175 East 96th Street (12 R)
New York, New York 10128
Pro Se Plaintiff

—Electronic Signature—
/s/ Annamarie Trombetta June 29, 2023

Annamarie Trombetta Pro Se Plaintiff

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